

# A C Q U I S I T I O N

## Types of Contracts-

What you don't know can hurt your business

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# Overview

## A C Q U I S I T I O N

- Contract Elements
- Bilateral versus Unilateral
- Completion vs. Term-type
- Award-Type Impact
- Pricing Arrangements
- Other contract applications
- Selection factors
- Summary
- References

# Workshop Objectives

## A C Q U I S I T I O N

- Learn about different contract types
  - Characteristics
  - Determine appropriate use
- ***Risk Analysis***- Key selection factor
  - Assessing risk
  - Understand fee/profit impact
  - Understand potential business impact

# Definition of a Contract

A C Q U I S I T I O N

“A Contract is a promise, or set of promises, for breach of which the law gives a remedy, or the performance of which the law in some way recognizes a duty”

Williston, Contracts, Section 1, 3<sup>rd</sup> Ed. 1957 (4<sup>th</sup> Ed. 1990)

# Elements of a Contract

A C Q U I S I T I O N

- “Legally enforceable”
- Competent parties
- Lawful purpose
- Legally sufficient “consideration”
  - Money
  - Other
- Written agreement
- Terms

# Elements of a Contract (cont.)

## A C Q U I S I T I O N

- Federal Acquisition Regulation (*FAR 2.101*):
  - *Mutually binding* legal relationship
    - Seller obligated to furnish supplies or services
    - Buyer obligated to pay
- Terms
  - “Boilerplate” provisions
  - Period of performance
  - Price and payment

# Bilateral vs. Unilateral

## A C Q U I S I T I O N

- Bilateral agreement
  - *A mutual exchange* of promises
  - Types
    - *Basic* (new) contract
    - *Supplemental Agreement (SA)* (aka a “mod”)
      - ***Bilateral*** subcontract change in scope, quantity, schedule
    - *Purchase Order*
      - Only if acceptance copy is signed and received
      - No exceptions can be taken
    - *Undefinitized SA (JPL)*
      - Everything but price agreed to

# Bilateral vs. Unilateral

## A C Q U I S I T I O N

- Unilateral agreement
  - Only *one promise* (usually by buyer)
  - Types
    - Purchase Order
    - Unilateral Modification (aka “UCA”)
      - Increased funding
      - Administrative correction
      - Change Under CHANGES Clause



# Completion Vs. Term

A C Q U I S I T I O N

<u>Type of Effort</u>	<u>Description/Factors</u>
<i>Task</i> (completion-type)	Requires delivery of specified <i>end-item</i>
<i>Term-type</i> (Level-of-Effort)	Requires specified <i>level of effort</i> over a period of time

# Award Type

## A C Q U I S I T I O N

- Competitive
- Noncompetitive
- NASA or Sponsor-Directed
  - Competitive
    - You may have to propose FP
      - Make sure you can perform
  - Non-competitive
    - You might insist on cost-type
- Note:** Determine who is making source selection decision

# Pricing Arrangement

## A C Q U I S I T I O N

- Allocates *cost risk* between JPL and contractor
- Fixed-price type contracts
  - More risk on *contractor*
- Cost-type subcontracts
  - More risk on *buyer*
- Many variations of above
  - CPFF/IF/AF; On-orbit fee pools

# Pricing Arrangements by Contract Type

A C Q U I S I T I O N

Fixed Price	Cost Reimbursement	Time and Material/L/H
Firm-fixed price	Cost reimbursement	Time and material
Fixed price with economic price adjustment	Cost-plus-a-percentage-of cost	Labor-hour
Fixed-price incentive	Cost-plus-fixed fee	
	Cost-plus-incentive fee	
	Cost-plus-award fee	

# Pricing Arrangements by Contract Type

A C Q U I S I T I O N

<u>Type of Subcontract</u>	<u>Characteristics</u>
<b>Commercial items and services (CIS)</b>	<ul style="list-style-type: none"><li>-Customarily used for <i>nongovernmental</i> purposes</li><li>-Sold/licensed/leased to general public</li><li>-OR-</li><li>-<i>Offered</i> for sale to general public</li><li>-Evolved from above that will be available to general public by time of delivery requirement</li><li>-<b>Minor</b> mods thereto</li><li>-Installation services, maintenance, repair to support above items AND</li><li>-Offered to govt. and general public under similar terms</li></ul>

# Misuse of CIS Contracts

A C Q U I S I T I O N

- Item or service not commercial
- Mods of items too extensive
- R&D or developmental work involved
- Services based on hourly rates *without* established catalog or market price for *specific* service performed

# Pricing Arrangements by contract type

A C Q U I S I T I O N

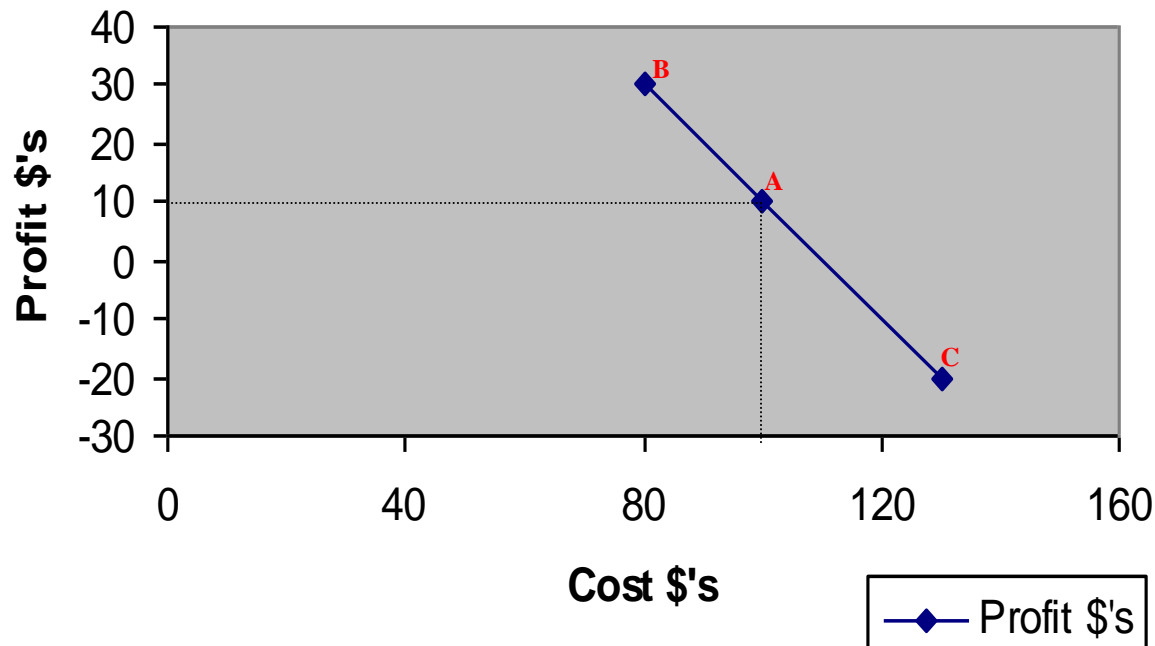
<u>Type of Subcontract</u>	<u>Characteristics</u>
<b>Fixed-price</b>  FAR 16.2	<ul style="list-style-type: none"><li>- <i>Well-defined</i> requirements</li><li>- Competition exists or price readily estimated</li><li>- Supplier willing to accept FP</li><li>- Technical risk relatively low</li><li>- Amount of R&amp;D not extensive</li><li>- Preferred subcontract type (in theory)</li><li>- Most commonly used in Govt.</li></ul>

# Pricing Arrangements by contract type

A C Q U I S I T I O N

## COMPLETION TYPE - FIRM FIXED PRICE

(CONTRACTS AND PURCHASE ORDERS)



### EXAMPLES

A. PROPOSED \$110K  
COST 100  
PROFIT \$10K

B. PROPOSED \$110K  
COST 80  
PROFIT \$30K

C. PROPOSED \$110K  
COST 130  
LOSS <\$20K>

(A, B and C represent different *actual* costs)



# Pricing Arrangements by contract type

A C Q U I S I T I O N

<u>Type of contract</u>	<u>Characteristics</u>
<b>Labor-Hour</b> (FAR 16.601)	<ul style="list-style-type: none"><li>-Support from company individuals</li><li>-Fixed hourly rates</li><li>-Rate includes all cost elements (including profit)</li></ul>
<b>Time-and-material</b>	<p>Same as above, but with materials</p> <ul style="list-style-type: none"><li>-No profit on materials</li><li>-May have handling charge</li></ul>

# Pricing Arrangements by contract type

A C Q U I S I T I O N

## Type of contract

### **Cost-reimbursable**

(FAR 16.3)

## General Characteristics

- Govt. assumes cost risk
- Costs reimbursed if:
  - Allowable/Allocable/  
Reasonable
- “Best efforts”
- Value relatively large
  - Adequate accounting system
  - R&D often involved
- Requires oversight/audit
- May take years to close out

# Pricing Arrangements by Incentive Type

A C Q U I S I T I O N

Type of contract

**Cost-reimbursable**

Sub-types

- Cost-Reimbursable with an Educational Institution (CREI)
- Cost-Plus Fixed Fee (CPFF)
- Cost-Plus Incentive Fee (CPIF)
- Cost-Plus-Award Fee (CPAF)
- Cost-sharing
- Award Term

# Pricing Arrangements by contract type

A C Q U I S I T I O N

## Type of contract

### **Cost-Plus-Fixed-Fee (CPFF)**

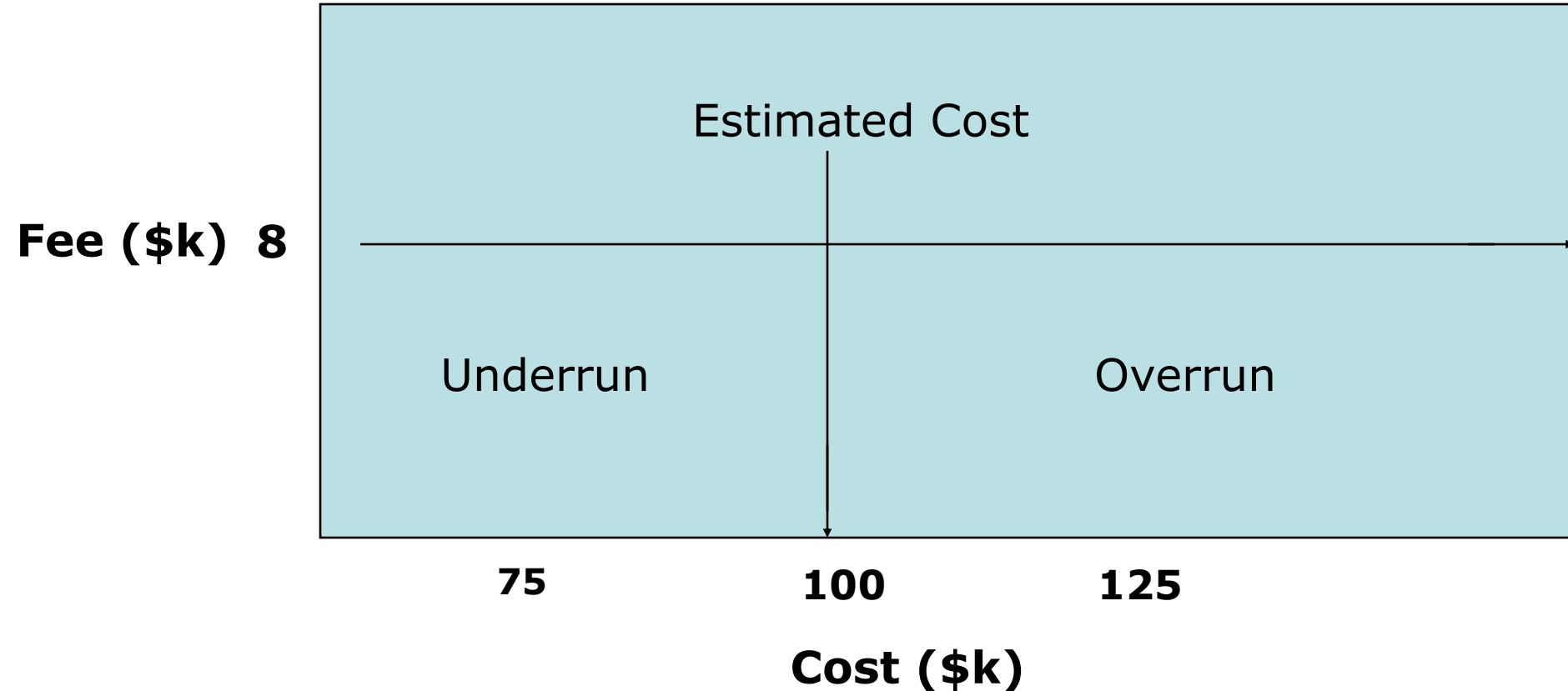
## Characteristics

- Used for basic research and new, high-risk R&D
- Fee subject to FAR cap
- Fee (once negotiated) does not vary with cost experience of contractor
  - Exception: Modifications
- Advantage:** Allows extensive buyer interaction with contractor
- Drawback:** Little incentive for contractor to minimize costs

# Pricing Arrangements by contract type

A C Q U I S I T I O N

## COMPLETION TYPE – Cost Plus Fixed Fee



# Pricing Arrangements by contract type

A C Q U I S I T I O N

## Type of contract

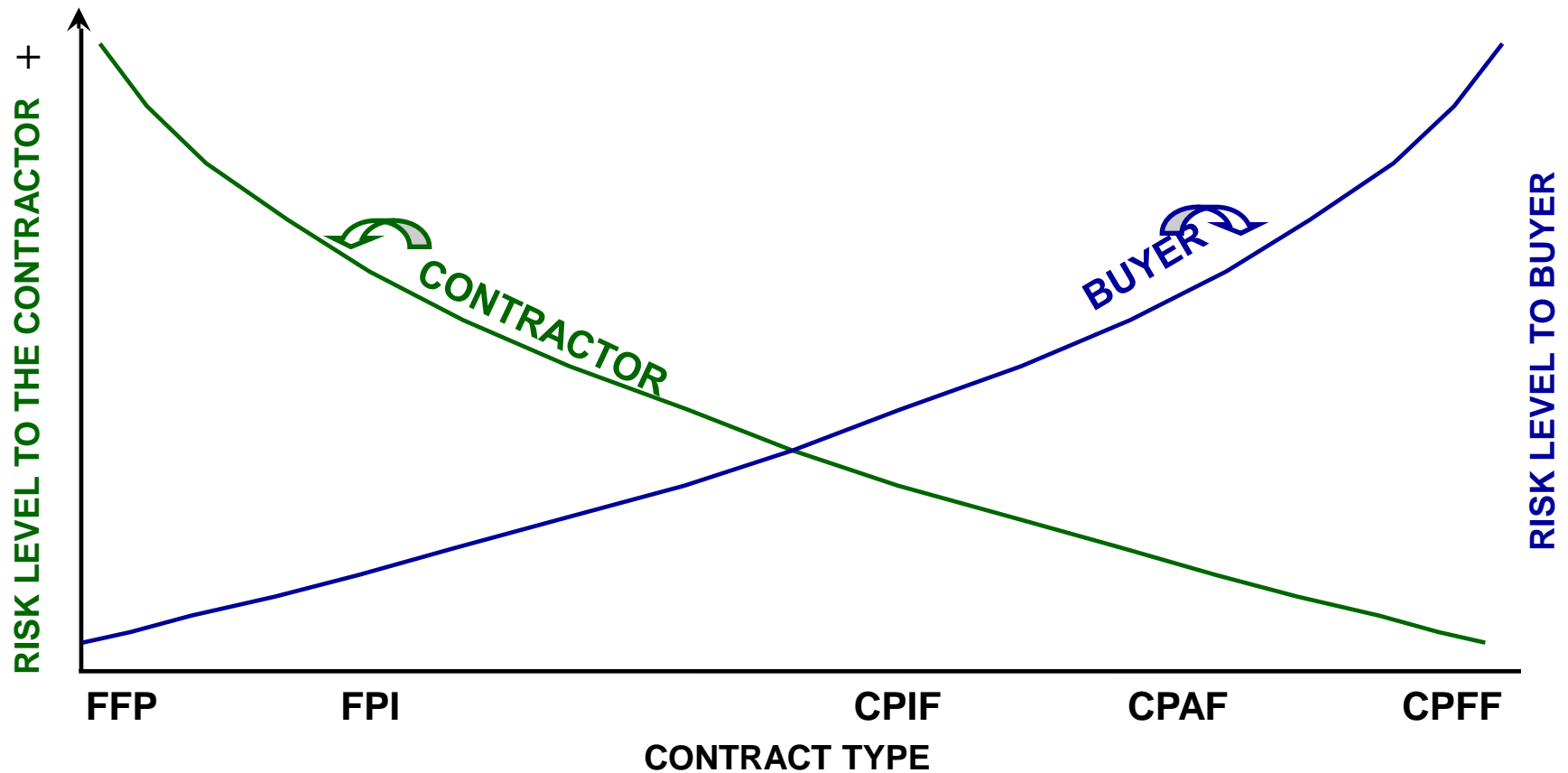
### **Cost-Plus-Award-Fee** (CPAF)

## Characteristics

- Fee subject to FAR cap
- Used for large, complex efforts
- Letter of emphasis used
- Fee is:
  - Subjective
  - Periodically determined by buyer
  - Unilateral
- **Drawback:** Expensive to administer

# Contract Type Risk Sharing Comparison

A C Q U I S I T I O N



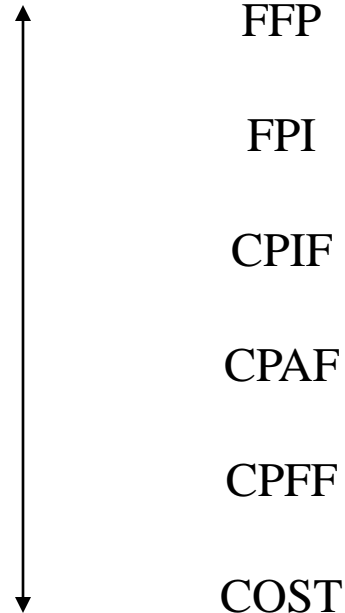
FFP	Firm fixed-price	CPIF	Cost-plus-incentive-fee	CPFF
FPI	Cost-plus-Fixed-price incentive fixed fee	CPAF	Cost-plus-award-fee	

# Pricing Arrangement (cont.)

A C Q U I S I T I O N

Selection dependent on type of profit incentive

## HIGH PROFIT INCENTIVE



## LOW PROFIT INCENTIVE



# Overuse of cost-type contracts

## A C Q U I S I T I O N

- Used when we don't know what we want
  - **Solution:** Develop good requirements
- Assuming contractor will only accept cost-type contract
  - **Solution:** Send them the RFP
- Contractor previously lost money on fixed-price subcontract
  - **"Solution":** Issue cost-type contract
- JPL maintains greater control over a contractor
  - True, but at considerable expense
  - May be worth it for mission/schedule-critical items

# Other Subcontract Tools

A C Q U I S I T I O N

<u>Tool</u>	<u>Characteristics</u>
<b>Start-up contract</b>	<ul style="list-style-type: none"><li>-Preferred instrument to commence urgent work</li><li>-Specific scope, amount and duration</li></ul>
<b>Letter contract</b>	<ul style="list-style-type: none"><li>-Allows work to start before agreement reached</li><li>-High risk for JPL--rarely used</li></ul>
<b>Indefinite-delivery</b>	<p>Allows for flexibility in both quantities and scheduling of deliveries</p>
<b>Contract work order (CWO)</b>	<ul style="list-style-type: none"><li>-Orders released under broader contract</li></ul>

# Other contract types

## A C Q U I S I T I O N

- I-Procurement, Purchase cards
- Purchase Orders
- Consulting agreements
- Leases, rentals, loan agreements
- Basic Agreements, Blanket Purchase Agreements, Indefinite Delivery/Indefinite Quantity agreements (IDIQs)

# Other contract types (cont.)

## A C Q U I S I T I O N

- Consulting Agreements (FAR 31.205-33)
  - For *advisory* services of experts
    - May involve reports, recommendations

# Other contract types (cont.)

## A C Q U I S I T I O N

- Equipment Leases/Rentals

- Use When:

- Item required for limited time
    - Lease vs. purchase analysis shows lease costs less
    - If funding not available, consider lease with purchase option

# Other contract types (cont.)

A C Q U I S I T I O N

- Loan Agreements
  - Used when buyer wants an item for evaluation
  - Issues
    - Installation/shipping/other expenses
    - Risk of loss
  - If you need to borrow something from an agency
    - Read terms and conditions carefully
    - Caution: May make your proposal less competitive

# Factors in selecting contract type

ACQUISITION

	Fixed-Type	Cost-Reimbursable
<b>Requirements</b>	Clearly defined <ul style="list-style-type: none"> <li>•Product and/or service</li> <li>•Off-the-shelf or minor mods</li> </ul>	Not well defined <ul style="list-style-type: none"> <li>•Completion (goal/product)</li> <li>•Term (level of effort [LOE])</li> </ul>
<b>Costs</b>	Controlled by contract type <ul style="list-style-type: none"> <li>•Increased only by change</li> </ul>	Reimbursable if authorized, allocable, allowable & reasonable
<b>Oversight</b>	Monitor only performance and schedule	Monitor all aspects of cost, schedule, and performance
<b>Excess/Residual Materials</b>	Owned by contractor	Owned by government
<b>Performance</b>	Performance or delivery maximized	Best efforts—no guarantee
<b>Changes</b>	Equitable adjustment for changed scope	Equitable adjustment for changed scope

# Factors in selecting contract type

## A C Q U I S I T I O N

Factor	Type of Subcontract	
	Fixed-Price	Cost-Type
Who assumes more risk	Contractor	Buyer
Contract adjusts without scope change	No	May—cost growth, overhead growth
JPL pays for growth	No, unless scope change	Yes—if deemed allowable, directly related to contract and funding available
Funds to contractor	Normally 100% at start, or fund incrementally	Normally incrementally funded
Performance or delivery schedule	Time is of the essence	Best efforts



# Factors in selecting contract type

## A C Q U I S I T I O N

Factor	Type of contract	
	Fixed-Price	Cost-Type
Permissible to terminate contract	Yes, possible damages	Yes, possible damages
Contractor assumes cost growth, risks, with same scope and schedule	Yes	Normally not. May build into contract and negotiate (rate ceilings, etc.)
Mix cost-type and fixed-price in same contract vehicle	Normally not combined	Normally not combined
Closeout costs	No	Yes. Submit rate adjustments, etc.
NASA Form 533 cost report	No	Normally yes (over certain contract values, or dependent on complexity)

# Summary

## A C Q U I S I T I O N

- If Govt. wants fixed price, make sure you can perform
- Make sure Statement of Work is complete
  - Resolve ambiguities and TBDs prior to start
- Ensure contract type fairly allocates risk
- Meet with Govt. to refine, if necessary

# References

A C Q U I S I T I O N

- FAR Part 16-Types of Contracts
    - <https://www.acquisition.gov/far/html/FARTOCP16.html>
  - Comparison of Major Contract Types—Chart
    - [Comparison of Major Contract Types MARCH 2011 Version Final \[PRINT\].ppt](#)
    - [Comparison of Major Contract Types MARCH 2011 Version Final \[VIEW\].ppt](#)
- (Courtesy Defense Acquisition University-Updated March 2011)